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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 NATIONAL LAWYERS' GUILD SAN
14 FRANCISCO CHAPTER, et al.,

15 Plaintiffs,

16 v.

17 U.S. DEPARTMENT OF HOMELAND
18 SECURITY, et al.,

19 Defendants.
/

No. C 08-5137 CRB

**JOINT STATUS REPORT
AND STIPULATION TO STAY
PROCEEDINGS; AND ~~PROPOSED~~
ORDER**

20 WHEREAS, in an effort to narrow the issues before the Court,

21 1. On February 13, April 24, and June 24, 2009, the parties informed the Court that
22 Defendants had agreed to reconsider the scope of their searches, reconsider the bases for their
23 withholding of records previously produced, and/or perform secondary searches in response to
24 Plaintiffs' February 2008 FOIA request (and, in the case of EOIR, in response to Plaintiffs' June
25 2008 FOIA request). On April 27 and June 25, 2009, the Court approved the parties' stipulations
26 to stay proceedings to allow these secondary searches, and the processing of potentially responsive
27 records, to take place; and
28

1 2. On July 24, 2009, the parties informed the Court that four Defendants — DHS, DHS-
2 OIG, CIS, and CBP — had completed their secondary searches and/or processing, and that the
3 parties had agreed to confer by a series of dates certain in an effort to resolve Plaintiffs' claims
4 against those Defendants without the Court's intervention. On the same date, the parties informed
5 the Court that the two other Defendants — EOIR and ICE — had not yet completed the processing
6 of potentially responsive records identified from their secondary searches, and provided an update
7 on the status of those Defendants' searches and processing; and

8 3. On July 30, 2009, the Court approved the parties' stipulation (a) to further stay
9 proceedings through and including October 30, 2009; and (b) to submit a joint report advising the
10 Court on the status of the above-mentioned negotiations and processing, and/or a stipulation
11 proposing a schedule to govern further proceedings, no later than October 30, 2009; and

12 4. In accordance with the parties' July 24 status report, Defendants DHS, DHS-OIG,
13 CIS, and CBP have provided Plaintiffs with a letter that describes the scope of their respective
14 searches for responsive records; Plaintiffs have responded with certain objections and/or requests
15 for clarification; and the parties have conferred in an effort to resolve the outstanding issues. As a
16 result, Plaintiffs have stipulated that they do not contest the adequacy of the searches performed by
17 Defendants DHS, DHS-OIG, or CIS. Plaintiffs have requested additional details regarding the
18 search conducted by CBP, and are not prepared to stipulate to its adequacy; however, further
19 negotiation may eliminate the need for judicial resolution of this issue.

20 5. In further accord with the parties' July 24 status report, Defendants DHS-OIG and
21 CBP — which withheld certain records as exempt from disclosure — have provided Plaintiffs with
22 a preliminary, partial Vaughn index explaining the bases for the withholdings that Plaintiffs have
23 contested. In response, Plaintiffs have stipulated that they do not contest the propriety of the
24 withholdings made by DHS-OIG. With respect to CBP, Plaintiffs have responded with several
25 objections and/or requests for clarification; however, further negotiation may likewise eliminate
26 the need for judicial resolution of these issues.

27 6. Defendant EOIR has completed its secondary search and produced the remaining
28 responsive, nonexempt records to Plaintiffs on August 24, 2009. The parties have conferred to

1 discuss ways to move toward resolution of Plaintiffs' claims against EOIR without the Court's
2 intervention, and have agreed in principle to follow a process similar in structure to that used by the
3 other Defendants, see, e.g., supra ¶¶ 4-5. However, in view of the large volume of documents
4 located by EOIR's secondary search — nearly 2,700 pages — additional time is needed for the
5 parties to reach agreement on the parameters and dates certain for such a process. The parties have
6 agreed to confer by November 13, 2009, in an effort to resolve this issue.

7 7. Defendant ICE has performed a secondary search that has located approximately
8 24,000 pages of potentially responsive records. Of those, ICE produced 321 pages of responsive,
9 nonexempt records on June 2, 2009; 314 pages on June 23, 2009; 1,034 pages on July 23, 2009; 335
10 pages on August 4, 2009; 390 pages on August 24, 2009; 1,178 pages on September 25, 2009; and
11 788 pages on October 29, 2009. An additional 556 pages have been determined to be duplicate or
12 nonresponsive documents. Approximately 19,084 pages of potentially responsive records remain
13 to be processed. As noted in the parties' July 24 status report, the parties have agreed that, given
14 the resource constraints on ICE's FOIA office, a processing rate of approximately 1,000 pages of
15 potentially responsive records per month is reasonable, and that ICE will continue to make interim
16 productions of responsive, nonexempt records on a monthly basis; and

17 WHEREAS it would minimize litigation costs and conserve judicial resources to stay
18 further proceedings in this case to permit the above-mentioned negotiations and processing to
19 continue, and to permit the parties to confer further as described above;

20 IT IS HEREBY AGREED AND STIPULATED by and between the parties, through
21 undersigned counsel, subject to the approval of the Court, that:

- 22 1. Further proceedings in this case are stayed for a period of approximately 3 months
23 through and including January 30, 2010; and
- 24 2. No later than January 30, 2010, the parties shall submit a joint report advising the
25 Court on the status of the above-mentioned negotiations and processing and/or a
26 stipulation proposing a schedule to govern further proceedings.

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1 Dated: October 30, 2009

2 Respectfully submitted,

3 /s/ Jennifer Lee Koh
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Attorneys for Defendants

19 **SIGNATURE ATTESTATION**

20 In accordance with General Order 45(X), I hereby attest that I have obtained Jennifer Lee
Koh's concurrence in the filing of this document.

21 /s/ Eric B. Beckenhauer
22 ERIC B. BECKENHAUER

23 **~~PROPOSED~~ ORDER**

24 Pursuant to stipulation, **IT IS SO ORDERED.**

25 Dated: November 10, 2009

26 CHARLES R. BREYER
United States District Judge

